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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GLAZING HEALTH AND WELFARE FUND;
SOUTHERN NEVADA GLAZIERS AND
FABRICATORS PENSION TRUST FUND;
GLAZIERS APPRENTICESHIP TRAINING
TRUST; IUPAT POLITICAL ACTION
COMMITTEE; GLAZIERS LABOR
MANAGEMENT COOPERATION COMMITTEE;
GLAZIERS INDUSTRY PROMOTION FUND;
GLAZIERS ORGANIZING FUND; GLAZIERS
SAFETY TRAINING TRUST, each acting by and
through their designated fiduciaries, John Smirk and
Rick Polson; IUPAT INDUSTRY PENSION
TRUST FUND, acting by and through its fiduciary
Gary Meyers; EMPLOYEE PAINTERS WELFARE
TRUST; PAINTERS JOINT COMMITTEE TRUST;
PAINTERS JOINT APPRENTICESHIP TRAINING
TRUST; PAINTERS INDUSTRY PROMOTION
FUND; PAINTERS JOINT COMMITTEE
INDUSTRY PROMOTION FUND; PAINTERS
ORGANIZING FUND; PAINTERS LABOR
MANAGEMENT COOPERATION COMMITTEE;
PAINTERS SAFETY TRAINING TRUST, each
acting by and through their designated fiduciaries,
John Smirk and Thomas Pfundstein,

Plaintiffs,

vs.

PEREGRINE INSTALLATION, CO., an Indiana
corporation; PERINI BUILDING COMPANY, INC.,
an Arizona corporation; BURKE CONSTRUCTION
GROUP, INC. d/b/a BURKE & ASSOCIATES,

CASE NO.:

**COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF
FIDUCIARY DUTY [29 U.S.C. §§
1002, 1104, 1109, 1132], CLAIMS
AGAINST LICENSE AND SURETY
BONDS and GENERAL
CONTRACTOR LIABILITY
[NRS 608.150]**

Date: N/A
Time: N/A

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INC., a Nevada corporation; TISHMAN CONSTRUCTION CORPORATION OF NEVADA, a Nevada corporation; JOHN DOES I-X, inclusive; ROE ENTITIES I-X, inclusive; BOE BONDING COMPANIES I-X, inclusive,

Defendants.

COME NOW, the Plaintiffs, the Glazing Health and Welfare Fund; Southern Nevada Glaziers and Fabricators Pension Trust Fund, Glaziers Apprenticeship Training Trust, IUPAT Political Action Committee, Glaziers Labor Management Cooperation Committee, Glaziers Industry Promotion Fund, Glaziers Organizing Fund and Glaziers Safety Training Trust, each acting by and through their designated fiduciaries, John Smirk and Rick Polson (“Glaziers Trust Funds”), the International Union of Painters and Allied Trades Industry Pension Trust Fund, acting by and through its fiduciary Gary Meyers (“IUPAT”), and Employee Painters Welfare Trust; Painters Vacation Trust; Painters Joint Committee Trust; Painters Joint Apprenticeship Training Trust; Painters Industry Promotion Fund; Painters Joint Committee Industry Promotion Fund; Painters Organizing Fund; Painters Labor Management Cooperation Committee; Painters Safety Training Trust, each acting by and through their designated fiduciaries, John Smirk and Thomas Pfundstein (“Painters Trust Funds”) (collectively “Trusts” or “Plaintiffs”), by and through their attorneys, Christensen James & Martin, and for their claims for relief against the above-named Defendants, hereby complain, allege and assert as follows¹:

JURISDICTION & PARTIES

1. This Court has jurisdiction of this case pursuant to § 301(a) of the Labor-Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)] and § 502(e) of the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. § 1132(e)(1)]. Pursuant to 28 U.S.C. § 1367 this Court has ancillary jurisdiction over any secondary causes of

¹ The Trusts filed Statements of Facts Constituting Lien in Clark County, Nevada District Court, Case Nos. A-10-612676-B and A-10-607921-B, concurrently with the filing of this action, to pursue their lien claims pursuant to N.R.S. 108.221 et seq. The Trusts reserve the right to pursue foreclosure of their liens in this Action if the state court claims are dismissed without prejudice.

1 action.

2 2. The Plaintiff Trusts are express trusts created pursuant to written declarations of
3 trust, consistent with § 302(c) of the Labor-Management Relations Act of 1947, as amended [29
4 U.S.C. § 186(c)].

5 3. At all times material herein, the IUPAT District Council 15, Glaziers Union Local
6 No. 2001 (“Glaziers Union”) has been a labor organization representing employees in the
7 construction industry in southern Nevada. The Glaziers Union is a labor organization
8 representing employees in an industry affecting commerce within the meaning of § 301(a) of the
9 Labor Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

10 4. At all times material herein, the IUPAT District Council 15, Painters Union Local
11 No. 159 (“Painters Union”) has been a labor organization representing employees in the
12 construction industry in southern Nevada. The Painters Union is a labor organization
13 representing employees in an industry affecting commerce within the meaning of § 301(a) of the
14 Labor Management Relations Act of 1947, as amended [29 U.S.C. § 185(a)].

15 5. The Trusts are informed, believe and thereon allege that Defendant Peregrine
16 Installation, Co. (“Peregrine”) is an Indiana corporation doing business as a contractor in Clark
17 County, Nevada on certain projects at the CityCenter development, including the Aria Tower,
18 Mandarin Oriental and Veer Tower (“Projects”).

19 6. The Plaintiffs are informed, believe and thereon allege that at all times material
20 herein, Defendant Perini Building Company (“Perini”) was and is an Arizona corporation doing
21 business as a contractor in Clark County, Nevada.

22 7. The Plaintiffs are informed, believe and thereon allege that at all times material
23 herein, Defendant Tishman Construction Corporation of Nevada (“Tishman”) was and is a
24 Nevada corporation doing business as a contractor in Clark County, Nevada.

25 8. The Plaintiffs are informed, believe and thereon allege that at all times material
26 herein, Defendant Burke Construction Group, Inc. d/b/a Burke & Associates, Inc. (“Burke”) was
27 and is a Nevada corporation doing business as a contractor in Clark County, Nevada.
28

1 which hours of work covered by the CBAs and/or the Trust Agreements were performed.

2 FIRST CAUSE OF ACTION

3 [Breach of Contract—29 U.S.C. § 1132(e) – Peregrine and Doe Defendants]

4 14. According to the CBAs, the Trust Agreements and controlling legal authorities
5 including *Central States Trust Fund v. Central Transport*, 472 U.S. 559 (1985), Peregrine must
6 permit the Trusts Funds’ auditors to conduct audits of its payroll and related records in order to
7 determine if fringe benefit contributions have been properly paid to the Trusts.

8 15. The Trusts have caused their agents to begin performing compliance Audits of
9 Peregrine’s payroll and related records for the period January 2009 through present (“Audit
10 Period”).²

11 16. The Trusts are informed, believe and thereon allege that Peregrine has violated
12 the terms of the CBAs and the Trust Agreements by failing to report all hours of covered labor
13 performed by its employees and by failing to remit fringe benefit contributions to Plaintiffs
14 during the Audit Period, including:

15 a. Glaziers Trust Funds: (i) underreported and unpaid contributions from
16 November 2009, (ii) reported but unpaid contributions from December
17 through March 2010, and (iii) an estimate of contributions for April 2010
18 based on an average of the previous three months;

19 b. Painters Trust Funds: reported but unpaid contributions from December 2009
20 through April 2010.

21 17. The Trusts are informed, believe and thereon allege that Peregrine is delinquent to
22 the Glaziers Trust Funds and IUPAT, after giving credit for all payments received, in the
23 principal amount of \$248,890.63, plus accrued interest in the amount of \$5,667.43, liquidated
24 damages in the amount of \$25,365.93, attorney’s fees and court costs in the estimated amount of
25 \$3,960.77³ and audit costs in the amount of \$6,698.00, for a total delinquency of \$290,582.76

26 _____
27 ² Audit procedures for the Glaziers Trust Funds are nearly complete, while the Audit for the Painters Trust Funds
has not yet begun.

28 ³ Attorney’s fees and costs through April 30, 2010.

1 (“Glaziers Delinquency”).⁴

2 18. The Trusts are informed, believe and thereon allege that Peregrine is delinquent to
3 the Painters Trust Funds and IUPAT, after giving credit for all payments received, in the
4 principal amount of \$29,995.43, plus accrued interest in the amount of \$476.73, liquidated
5 damages in the amount of \$4,040.80, attorney’s fees and court costs in the estimated amount of
6 \$1,368.89⁵ and audit costs in an amount to be proven at trial, for a total delinquency of
7 \$35,841.85 (“Painters Delinquency”).⁶

8 19. Pursuant to Title 29 U.S.C. § 1132(g)(2), Peregrine owes the Trusts accrued
9 interest at the rates established pursuant to Title 26 U.S.C. § 6621 on all unpaid contributions and
10 contract damages from the dates the sums were originally due to the Trusts to the date of
11 judgment and thereafter, until paid in full. The amount of said interest will be established by
12 proof at trial.

13 20. It has been necessary for the Trusts to engage the law firm of Christensen James
14 & Martin to collect any and all delinquencies discovered in the audit. Pursuant to the CBA,
15 Trust Agreements and Title 29 U.S.C. § 1132(g)(2), the Trusts are entitled to recover their
16 reasonable attorney’s fees and costs of suit.

17 21. The Trusts are entitled to recover a sum equal to any and all unpaid fringe benefit
18 contributions discovered in the audit and contract damages, plus accruing interest, liquidated
19 damages, attorney’s fees, costs of suit and audit costs. The Trusts allege that they are owed a
20 total Glaziers Delinquency and Painters Delinquency of \$326,424.61, plus accrued interest,
21 liquidated damages, attorney’s fees, court costs and audit costs (“Total Delinquency”).

22 22. The Plaintiffs are informed, believe and thereon allege that at all times material
23 herein, John Does I-X and Roe Entities I-X, and each of them, were the agent, partner, employee
24 and/or alter-ego of Peregrine, and in doing the things herein alleged, were acting within the
25 course and scope of said agency, employment or relation, with the permission and consent of
26

27 ⁴ The principal amount of the Glaziers Delinquency is comprised of

⁵ Attorney’s fees and costs through April 30, 2010.

⁶ The principal amount of the Painters Delinquency is comprised of unpaid contributions

1 their co-Defendants, and that each of them were working as a single entity and enterprise
2 affiliated with Peregrine, and John Does I-X and Roe Entities I-X are jointly and severally liable
3 with Peregrine for the Total Delinquency.

4 SECOND CAUSE OF ACTION

5 [Breach of Fiduciary Duty - 29 U.S.C. §§ 1002, 1104, 1109 – Doe and Roe Defendants]

6 23. Plaintiffs herein restate and reallege the allegations contained in paragraphs 1
7 through 24, as though set forth hoc verba.

8 24. One or more of the Doe and Roe Defendants (“Fiduciary Defendants”) exercised
9 authority and control relating to the management or disposition of Trust assets established
10 pursuant to the terms and provisions of the CBA, Trust Agreements and 29 C.F.R. §2510.3-102.
11 Fiduciary Defendants are fiduciaries for purposes of ERISA.

12 25. The actions of Fiduciary Defendants in failing to make required contributions to
13 the Trusts materially harmed the Plaintiff Trusts, placed the participants of the Trusts at risk with
14 regard to their benefits and constitute a breach of their respective fiduciary duties to the Plaintiff
15 Trusts and their participants.

16 26. The Plaintiff Trusts are entitled to recover a sum equal to the Total Delinquency
17 from the Fiduciary Defendants.

18 THIRD CAUSE OF ACTION

19 [General Contractor Liability Pursuant to NRS 608.150 –
20 Perini, Tishman, Burke, Doe & Roe Defendants]

21 27. Plaintiffs herein restate and reallege the allegations contained in paragraphs 1
22 through 28 of their Complaint, as though set forth herein hoc verba.

23 28. Upon information and belief, Peregrine contracted with Perini, Tishman and
24 Burke and one or more of the Doe and Roe Defendants, as originating or general contractors
25 (collectively “General Contractors”) to perform covered labor on various Projects in Nevada.
26 The General Contractors have received the benefit of the covered labor provided by Peregrine’s
27 covered employees, but have not paid the Trusts the fringe benefit contributions and damages
28 owed for said labor accrued on the Projects.

